

**STATEMENT OF  
THE HONORABLE NORMAN Y. MINETA  
SECRETARY OF TRANSPORTATION  
Before the**

**COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION  
UNITED STATES SENATE**

**July 18, 2001**

Mr. Chairman, Members of the Committee, it is a pleasure to appear before you today and to have the opportunity to explain our plans for the safe admission of commercial truck and bus traffic to the United States from Mexico.

**INTRODUCTION**

Approved by Congress in 1993, the North American Free Trade Agreement was based on a simple premise -- that all of the countries in North America would be integrated into one free trade area. Eight years later, one major portion of NAFTA has yet to be implemented -- the requirement that all countries in North America be open to commercial vehicle traffic. This matter has generated vigorous dispute and considerable misunderstanding -- on both sides of the border, in the public and private sectors.

A NAFTA arbitration panel ruling in February of this year determined that the United States had violated its legal obligations to Mexico. President Bush has assured President Fox that the U.S. would move in a timely manner to meet our NAFTA obligations.

In May, the Department of Transportation proposed several rules relating to the carrier application process, rules that will be needed to implement the border opening. These rules form only one part of the Department's comprehensive safety implementation plan. The rules themselves will not be final until October, and applications for operating permits cannot be requested by Mexican carriers until then. The public comment period on the draft rules closed two weeks ago.

I want to acknowledge the significant concerns that some members of Congress and the public have expressed. Recent votes by the House of Representatives and the Senate Appropriations Committee on this matter have sent a clear message: Congress will insist that the United States have a rigorous, effective safety program in place prior to implementing the truck and bus access provisions of NAFTA.

Mr. Chairman, you have my personal assurance that I share this very same commitment to implementing a truly effective NAFTA safety program.

You will hear today that the Bush Administration is prepared to enhance and significantly expand our safety implementation plan. I want to work with Congress to try to reach consensus on a plan and the resources required to meet our NAFTA obligations without sacrificing safety.

Today I will discuss the practical steps that the Administration is taking to meet that objective. My remarks focus on two topics: (1) the four principles that guide the Department's work to implement NAFTA; (2) the specifics of the Department's safety implementation plan regarding Mexico's truck and bus access.

## **GUIDING PRINCIPLES**

Four core principles guide our work to implement the NAFTA truck and bus access provisions.

***First, safety is the Department of Transportation's highest priority, and we will not sacrifice safety to implement NAFTA's trucking and bus provisions.*** With the support of Congress, Mexico's government, Federal and State enforcement officials, and the industry, I think we can implement an effective safety enforcement program and meet our NAFTA obligations by January 1, 2002. The President's budget lays out requirements to do that. However, if our ongoing work should prove that we need more time, we will take it; if we need more resources, we will insist upon them. We will do the job right.

***Second, every Mexican firm, vehicle and driver that seeks authority to operate in the U.S. – at the border or beyond – must meet the identical safety and operating standards that apply to U.S. and Canadian carriers.*** Nothing less than this is acceptable.

***Third, the United States must fully comply with our NAFTA obligations.*** Not everyone on this Committee supported approval of NAFTA in 1993. As a Member of Congress I did, but only after careful consideration of the possible impact on a wide range of issues, including safety. I concluded then, and I continue to believe, that the free and open trade fostered by NAFTA is in the best interest of the people of this Nation and our economic future. The Mexican government has assured the United States that it will allow U.S. trucks access to Mexico. As Secretary of Transportation, my task is to work with Congress to decide how to meet our existing and very real international legal obligations.

***Fourth, Mexican carriers lawfully operating in the United States must be guaranteed the same high standards of fairness and protection that we offer U.S. and Canadian carriers.*** There is a technical term of the NAFTA that gives Canadian, Mexican and U.S. carriers operating in one of the other countries so-called national treatment. That means we must provide a level playing field for competition. Because Mexico's safety enforcement regime differs in significant ways from that of Canada and the United States, the arbitration panel granted us reasonable flexibility in choosing the best way to ensure a Mexican carrier's compliance with our safety regulations. There can be civil discussion about what constitutes reasonable flexibility.

I must say, however, that I am concerned about the tenor of some of the NAFTA implementation debate. Some seem to argue that a Mexican carrier -- precisely because it is from Mexico -- cannot or will not comply with our laws. President Bush and I will insist on full compliance with our safety laws. But we will not accept enforcement requirements that create a *de facto* system that **unfairly discriminates against** Mexican drivers and carriers.

All four of these guiding principles must be met in implementing NAFTA's truck and bus access provisions. Let me now turn to a summary of the specifics regarding the Department's comprehensive safety implementation plan.

### **IMPLEMENTATION OF THE NAFTA TRUCK AND BUS ACCESS PROVISIONS**

On January 20 of this year, the Department of Transportation did not have a program, nor an adequate plan, that would allow us to open the border. Today we are well on the way to having the effective safety enforcement program that will allow us to move forward with NAFTA by year's end.

None of us can guarantee that a Mexican truck, a Canadian truck or, for that matter, a U.S. truck will never have a catastrophic accident somewhere in the United States. I *can* guarantee that the efforts of three DOT agencies -- FMCSA, FHWA, and NHTSA -- are directed, on a daily basis, to helping prevent that accident. Our NAFTA safety implementation plan will bring greater resources and a substantially enhanced focus on enforcement.

I know that the actual safety considerations in implementing our NAFTA obligations are very different from the picture painted by some opponents. I would like to address a few of those points.

I will begin with a discussion of the new resources requested by the Administration. I will then describe the comprehensive safety enforcement program we propose to carry out, which has five basic elements:

- (1) a safety review of truck and bus firms before the awarding of operating authority;
- (2) An expanded vehicle inspection regime, including significantly more safety compliance inspections for all commercial vehicles and enough inspectors to staff all border crossings during the times commercial vehicles are allowed to cross;
- (3) audits of drivers to assure compliance with licensing, hours of service regulations and all other driver requirements;
- (4) significant border infrastructure improvements; and
- (5) an extensive industry education program conducted on both sides of the border.

Full implementation will involve close coordination – already underway – with Federal and State officials in the United States, with the Mexican government, and with the truck and bus industries on both sides of the border. In short, the program focuses on firms, vehicles, drivers, infrastructure and education.

**Resources.** The Administration's budget request for FY2002 seeks an unprecedented increase in funds to prepare us for the new cross-border traffic. These funds would provide the increased number of Federal and State inspectors and inspection facilities that both our Inspector General and a "Blue Ribbon" Commission, which I had the honor to chair, called for in 1999.

To support comprehensive State and Federal safety enforcement activities at the southern border, the Department requested \$88.2 million in additional funds, which included \$13.9 million to hire 80 additional Federal inspectors to perform safety inspections and conduct safety audits of Mexican carriers. We plan to have all Federal enforcement personnel hired and trained by December 2001. In addition, we requested \$18 million to support staffing of State inspection facilities, increasing significantly State motor carrier safety inspection activities at the border.

The Department also requested \$54 million to provide the Federal share of costs for construction and improvement of State commercial motor vehicle inspection facilities. The Department requested \$2.3 million for immediate construction of areas to park commercial vehicles that are placed out-of-service for safety violations. We anticipate working closely with our Federal and State colleagues to conduct inspections. Currently 23 border commercial crossings do not have permanent inspection facilities. We want to help the border States address this gap.

**Operating Authority for Mexican Truck and Bus Firms.** On May 3, 2001, the FMCSA published three Notices of Proposed Rulemaking to govern the application process for Mexico-domiciled carriers seeking U.S. operating authority. The purpose of the rulemakings was to specify a process whereby Mexican-domiciled carriers may be granted conditional U.S. operating authority, and later, if its safety compliance record justifies, permanent operating authority. Here is how the process would work:

First, a carrier must specify whether it seeks authority to operate within the commercial zone or outside the commercial zone. Carriers with a currently valid authority to operate within the commercial zone will have a one-year transition period to begin the process described below, leading to permanent commercial zone operating authority.

Second, a carrier must undergo a mandatory *safety review* by FMCSA to obtain conditional operating authority. Mexican-domiciled carriers must provide detailed information on their operations, and make specific certifications regarding their ability to comply with U.S. safety regulations before they may obtain conditional operating authority.

Such requirements include U.S. safety regulations, including hours-of-service requirements, drug and alcohol testing regulations, the carrier's safety monitoring program, and the obligation to maintain an

accident register. Carriers would, for example, be obligated to supply the name of their insurance carrier and drug and alcohol testing service. The FMCSA will independently validate such coverage in each case prior to granting conditional authority. To perform these safety reviews, FMCSA will establish a consolidated safety review center. At FMCSA discretion, any such reviews may be conducted in person, at an appropriate Federal office at the border or at the carrier's place of business in Mexico.

Third, upon successful completion of the safety review, a carrier would be granted a provisional operating permit valid for 18 months.

Fourth, during the 18-month period, FMCSA will begin to collect safety and operational data on the carrier in the Motor Carrier Management Information System (MCMIS). The FMCSA will pull all available data from Mexican databases on carriers, vehicles, and drivers, but we will rely on our own information systems to continually monitor the safety of carriers operating in the U.S. Data on authority, vehicles, drivers, violations, accidents, insurance, and other safety information will be tracked by U.S. safety information systems. State and Federal inspectors at the border and throughout the U.S. will have complete access to the safety data maintained on Mexican carriers.

Investigators will review information in MCMIS collected on the carriers and documents required under Federal safety regulations. This includes records on driver medical qualifications, hours of service, drug and alcohol testing, and vehicle inspection, repair and maintenance. If safety problems are detected, FMCSA would take immediate action to help bring carriers into compliance or remove their provisional operating authority. To complement the new entrant regime, it will be necessary to modify existing regulations to provide appropriate penalties for any carrier that operates outside the commercial zone without valid operating authority. FMCSA will do so this Fall.

Fifth, after sufficient observation data has been accumulated on a given carrier (after approximately 4-12 months), the carrier must submit to a mandatory *safety audit*. The safety audit requires a face-to-face meeting with FMCSA inspectors and may, at FMCSA's discretion, take place at an appropriate Federal office at the border or at the carrier's place of business in Mexico. The safety audit incorporates review of all safety inspection and performance data gathered on the carrier, as well as an examination of the carrier's required records to prove compliance with U.S. carrier, vehicle and driver safety regulations.

Finally, after successful completion of the safety audit, and prior to the end of the 18-month provisional operating authority, FMCSA will determine whether to award a permanent operating authority.

Taken in sum, this process will provide considerable scrutiny of the motor carrier's ability to comply with U.S. safety standards. It should be noted that this new regime means heightened requirements for Mexican carriers currently operating in the commercial zone -- more scrutiny than currently exercised -- and it means a new, stricter system outside the commercial zone. These requirements go significantly beyond that imposed on U.S. and Canadian cross-border operations, for which there are currently no such waiting period or other new entrant requirements. The Department considers this regime an

appropriate level of scrutiny and consistent with the national treatment provisions of NAFTA.

The Department expects most of the carriers now operating in commercial zones to apply to continue that type of operation. We do not, in other words, expect a large number of immediate applications for authority to operate beyond the commercial zones.

**Vehicle Compliance.** All Mexican-domiciled vehicles seeking U.S. operating authority must comply with U.S. safety and performance standards for U.S. commercial vehicles. Based upon consultations with the industry, FMCSA believes that Mexican carriers that seek to operate outside the commercial zone will be equipped with the modern vehicles that compare favorably with the average over-the-road vehicle in the United States.

Over 50 percent of northbound trucks get inspected now. Based on U.S. Customs fees and license plate readings, there are at least 63,000 Mexican vehicles entering U.S. commercial zones. Our Inspector General has estimated the number may be as high as 85,000. In FY 2000, more than 53,000 safety inspections were performed on these Mexican trucks. FMCSA estimates that this is roughly twice the rate of inspections performed on domestic commercial vehicles. While there are 4.5 million *crossings* of the border each year, most trucks are engaged in drayage operations, making multiple border crossings daily.

The Department seeks to make routine Level 1 inspections -- the most thorough type of vehicle and driver check -- the rule for all Mexican-domiciled vehicles operating in the United States. Interim facilities must be created for inspections and for parking vehicles placed out of service. During the one-year transition period for NAFTA truck and bus access, the Department has planned to deploy teams of inspectors on both sides of the border to make Level 1 inspections available to carriers seeking U.S. operating authority.

California has already invested in inspection stations and has successfully brought out-of-service rates for Mexican commercial vehicles down to a level comparable with U.S.-based trucks. In that State, a Level 1 inspection -- actually getting under the vehicle -- is performed on each commercial vehicle that does not display a current Commercial Vehicle Safety Alliance (CVSA) decal indicating that an inspection has been performed within the last three months. In FY 2000, the out-of-service rate for Mexican trucks inspected in California is 27 percent and the national average is 24 percent.

With construction of additional permanent state inspection facilities and inspectors requested by the President, far more Level 1 inspections can be conducted, and a screening system similar to that of California could be implemented all along the border. DOT will work with States to locate the new facilities where commercial vehicles cannot evade inspections and ensure that truck size and weight enforcement is performed at each location.

Hiring of more Federal inspectors is underway. The FMCSA is now recruiting eighty new Federal

inspectors. Combined with our current Federal inspection staff of 60, we would more than double our Federal safety presence at the border and exceed the level of Federal inspectors recommended by the DOT Inspector General in his December 1998 report.

As stated above, the Department also is seeking \$18 million to double the number of State safety inspectors. With this increase, a combined State and Federal enforcement staff will total an impressive 496 inspectors. To put that figure in better perspective, there were only seven Federal safety inspectors at the border in December 1995, and about 45 State inspectors. If our FY 2002 budget request is approved, it would provide a 10-fold increase in overall Federal and State inspectors since 1995. This should allow us to meet DOT's goal of having vehicle inspectors on duty during all hours when the commercial crossings are open for business.

**Driver Standards.** The Level 1 CVSA inspections described above also include review of driver credentials. The expanded regime that includes vehicle inspections will thus also yield greater scrutiny of drivers. There will be no distinction between the requirements for drivers from Mexico, the U.S. or Canada. In the case of hours-of-service compliance, for example, the driver must produce logs that indicate authoritatively his or her driving time start and restart periods in Mexico for the runs that include a border crossing. The clock does not stop at the border, and we will not tolerate lapses.

**Infrastructure Improvements.** Our infrastructure improvements apply not only to the physical safety inspection facilities covered by the President's infrastructure request. We continue to work with our Mexican colleagues on the information and safety networks linking the two nations. Our actions involve a major initiative to improve the safety information systems that are available to Federal and State enforcement officials in the United States. We will be able to verify certain carrier application information directly with Mexican transportation officials, automate the review of applications, provide real-time safety performance and other data to Federal and State inspectors and effectively monitor the safety performance of Mexican motor carriers operating in the United States. All inspectors will have access to available U.S. and Mexican driver license, carrier, and other safety databases by January 1, 2002.

The Department of Transportation is working with Mexico to increase regulatory compatibility between our countries, establish cooperative agreements on the exchange of safety information, and provide technical assistance to build U.S.-compatible compliance and enforcement programs in Mexico. The objective is to bring Mexican safety requirements up to U.S. standards. The adoption and implementation of comparable programs in Mexico will provide greater assurance that vehicles entering the U.S. are already in compliance with United States safety standards.

**Implementation and Education.** The Department is committed to being proactive in helping Mexican carriers understand applicable U.S. law and regulations. The FMCSA, in concert with Mexico and the border States, will conduct a series of safety compliance seminars to educate Mexican carriers and

drivers about compliance with Federal and State motor carrier safety regulations. The seminars will take place on both sides of the border this Fall. When rules are finalized, meetings such as this will thoroughly explain the new application requirements. The seminars will supplement ongoing efforts to translate and distribute educational materials to Mexican carriers and drivers.

Also, with the Free Trade Alliance San Antonio, the Department is co-sponsoring a NAFTA Information Conference in that city on October 21-24, 2001. The conference will include all Federal and State agencies that have border enforcement responsibilities. The Departments of Transportation, Labor, and Agriculture, the U.S. Customs Service, the Immigration and Naturalization Service, the Environmental Protection Agency, and State enforcement officials will conduct panels explaining the various requirements that motor carriers must meet when operating in the United States. The Governments of Mexico and Canada will make similar presentations about their requirements and all three countries will distribute bilingual reference books that summarize their operating requirements.

## **CONCLUSION**

Opening the border to Mexican trucks and buses by the beginning of next year will require considerable effort. But I am thoroughly convinced that we can fulfill our NAFTA obligations while putting in place an effective safety enforcement regime.

I am disappointed, therefore, that the House voted to bar the use of any Department funds next fiscal year to process applications for Mexican carriers that seek to operate in the United States outside the commercial zone. As the Administration has formally stated, President Bush's senior advisors would recommend that he veto any bill containing provisions that foreclose the possibility of meeting our NAFTA obligations. While I am grateful to the Senate for providing funding for the inspectors and improvements described in this testimony, I have serious concerns about the numerous conditions the Senate has at this point placed on actions to open the border.

I want to close by reiterating my personal commitment, and that of the Administration, to work with the Congress to try to find an acceptable plan for NAFTA implementation – a plan that allows us to meet the four principles of safety and equity that I outlined at the beginning of this testimony. Mr. Chairman, I will be pleased to respond to any questions you or the Committee may have.